

The Commonwealth of Massachusetts DEPARTMENT OF PUBLIC UTILITIES

D.T.E./D.P.U. 04-38-A

October 1, 2008

Petition of The Berkshire Gas Company for approval by the Department of Public Utilities of its Revised 2004 through 2009 Gas Energy Efficiency Plan.

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ASSISTANCE NETWORK, MASSACHUSETTS COMMUNITY ACTION PROGRAM DIRECTORS ASSOCIATION, INC., AND LOW-INCOME ENERGY

AFFORDABILITY NETWORK

Intervenors

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I. <u>INTRODUCTION</u>

On March 26, 2004, The Berkshire Gas Company ("Berkshire" or "Company") filed with the Department of Public Utilities ("Department") a motion for the interim continuation of existing gas energy efficiency programs for the period May 1, 2004 through April 30, 2009 ("Plan"). This matter was docketed as D.T.E. 04-38. On August 12, 2004, a settlement agreement ("Settlement") between the Massachusetts Department of Energy Resources, ("DOER"), Low-Income Weatherization and Fuel Assistance Network, Massachusetts Community Action Program Directors Association Inc., the Low-Income Energy Affordability Network ("LEAN"), and the Department's Settlement Intervention Staff was filed with the Department. On September 13, 2004, the Department approved the Settlement which authorized the Company to continue implementing its residential and commercial and industrial ("C&I") energy efficiency programs through April 2009. The Berkshire Gas Company, D.T.E. 04-38 (2004).

In a July 25, 2008 Letter Order, the Department directed all Massachusetts energy efficiency Program Administrators¹ to submit proposals to increase spending for residential heating programs for the 2008 winter season, stating that "there is an urgent need to expand funding for existing residential gas and electric energy efficiency programs in order to respond

Program Administrators are those entities that administer energy efficiency programs, including distribution companies and municipal aggregators. Energy Efficiency Guidelines § 2.

to the potential for very high heating costs in the coming months." Request to Increase

Funding for Residential Energy Efficiency Programs, Letter Order (July 25, 2008) ("Letter Order").² The Company submitted its proposal to increase funding for residential energy efficiency programs on August 15, 2008 ("Revised Plan").

The Department requested comments on all Program Administrators' Revised Plans by August 25, 2008. Request to Increase Funding for Residential Energy Efficiency Programs, Hearing Officer Memorandum (August 1, 2008). Comments were received from Associated Industries of Massachusetts ("AIM"), the Attorney General of the Commonwealth of Massachusetts ("Attorney General"), the Conservation Law Foundation ("CLF"), DOER, Environment Northeast ("ENE"), the Low-Income Energy Affordability ("LEAN"), and Wal-Mart Stores East, L.P. ("Wal-Mart"). The Department requested reply comments on all Program Administrators' Revised Plans by September 5, 2008. Request to Increase Funding for Residential Energy Efficiency Programs, Hearing Officer Memorandum (August 27, 2008). Reply comments were received from Berkshire, ENE, LEAN, and The Energy Consortium ("TEC"). The evidentiary record includes two responses to information requests and written direct testimony.³

The Letter Order, which was sent to Massachusetts electric and gas energy efficiency Program Administrators, was issued in response to a request made to the Department by DOER in a letter dated July 16, 2008.

On its own motion, the Department moves into the evidentiary record of this proceeding the Company's responses to Information Requests DPU 1-1 and DPU 1-2, (continued...)

II. 2008 REVISED ENERGY EFFICIENCY PLAN

A. Introduction

In the Department's July 25, 2008 Letter Order at 1, we directed the Program Administrators to submit a proposal "that will allow for the implementation of the maximum achievable level of cost-effective expenditures on residential heating programs for the remainder of 2008." In support of their proposals, the Department directed the Program Administrators to submit the following information: (1) the energy efficiency programs that are targeted at residential heating end uses; (2) the additional dollars the company projects it can spend in a cost-effective manner; (3) the constraints that limit the additional dollars the company projects it could spend cost-effectively; (4) the additional number of residential customers that will be served; (5) the additional therm savings that will be expected to be achieved; (6) the dollar savings on monthly bills that additional participants will be expected to realize; (7) the effect on the cost-effectiveness of the applicable programs; and (8) the company's proposed mechanism for recovery of incremental costs. <u>Id.</u> at 2.

B. Revised Budget

1. Budget Increases

The Company proposed to increase spending by \$140,015 on the following programs:

(1) residential high efficiency heating rebate; (2) residential high efficiency water heating

^{3 (...}continued) and the direct testimony of Michael J. Sommer ("MJS-1").

rebate; (3) ENERGY STAR homes program; (4) ENERGY STAR windows programs; (5) residential weatherization program; (6) residential low-income; and (7) LEAN coordination fee (Exh. DPU 1-2).

2. Funding Constraints

The Company states that the ability to spend additional dollars cost-effectively is restricted by time constraints (Exh. MJS-1, at 8). In addition, the Company states that additional expenditures on cost effective savings are constrained by the program delivery infrastructure because there are not enough qualified contractors, among other infrastructure necessities, to maintain quality and safety standards for any additional expansion of programs (id.).

3. Additional Customers

The Company proposed to increase its target number of participants by 298 participants (Exh. DPU 1-2).

4. Annual Therm Savings

The Company projects an increase in its target lifetime million British thermal units ("MMBtu") savings by 5,665 MMBtu (Exh. DPU 1-2).

5. Customer Savings

The Company estimates that a residential participant in the R-3 rate class would save between \$35 and \$50 per month (Exh. MJS-1, at 11).

6. Cost-Effectiveness

The Company states that additional expenditures will increase rebates for well-established programs (Exh. MJS-1, at 9-10). The Company states that increasing rebates will not adversely affect cost-effectiveness. (Exh. MJS-1 at 9).

7. Cost Recovery

The Company proposes to recover the additional costs through the conservation charge component of the cost of gas adjustment clause and the applicable local distribution adjustment factor ("LDAF"), pursuant to D.T.E. 04-38 (Exh. MJS-1, at 10-11).

8. Additional Program Changes

In addition to increasing program budgets, the Company proposes several program changes. In the residential sector, the Company proposes to make the following changes:

(1) introduce a combined high efficiency space and water heating rebate; (2) introduce a high efficiency storage water heating rebate⁴; (3) increase incentives for the residential weatherization program⁵; and (4) modify the current heat loan offer to enable customers to

The Company proposes to start this program on January 1, 2009.

The Company proposes to increase the financial incentive to homeowners on the Company's residential heating rate from 50 percent to 75 percent. The Company proposes to increase the financial incentive to tenants on the Company's residential heating rate from 50 percent to 100 percent provided at least one unit is on the Company's low income heating rate. The maximum incentive will increase from \$1,500 to \$2,000.

receive a zero percent heat loan as well as incentives and rebates (Revised Plan, Exh. 2).⁶ In the low-income sector, the Company proposes: (1) to increase the heating system replacement allowance from \$16,000 to \$30,000; and (2) to increase the eligibility level from 60 percent to 80 percent of the Commonwealth's median income (Revised Plan, Exh. 3). In the C&I sector the Company proposes to make the following changes: (1) introduce a combined high efficiency space and water heating rebate; (2) introduce a high efficiency storage water heating rebate; and (3) move from a 50 percent incentive level to a stepped rebate ranging from \$1,000 per unit to \$6,750 per unit (Revised Plan, Exh. 4).

III. COMMENTS

A. Introduction

The majority of comments were of a general nature, applicable to most or all of the Program Administrators' revised gas and electric plans. In addition, certain comments were specific to an individual Program Administrator's revised plan. General and company-specific comments are each summarized below.

B. General Comments

1. Program Budgets

AIM argues that the Department's request for increased funding for energy efficiency programs is an overreaction to a temporary rise in energy prices and, accordingly, that any increased spending should be delayed until 2009 (AIM Comments at 1-2). While the Attorney

Previously, customers could receive either the 0 percent heat loan or incentives and rebates.

General does not challenge the need for increased energy efficiency funding to reduce low-income and residential customer heating bills this winter, she argues that the proposals fail to provide the detailed information required by the Department and, therefore, raise several substantive and procedural issues (Attorney General Comments at 3). For example, the Attorney General asserts that most proposals do not provide detailed budget increases, as required by the Department (id. at 4). Without such information, the Attorney General argues that the Department cannot ascertain where the additional funds will be spent, the extent that customers will benefit, or whether all proposed programs will be cost-effective (id. at 7).

DOER states that electric Program Administrators have proposed Revised Plans with significant increases of at least 30 percent over 2008 budgets for residential and low-income programs. However, DOER states that gas energy efficiency proposals vary widely (DOER Comments at 3). DOER argues that all gas proposals should increase budgets at least as much as electric proposals and that all cost-effective residential program budgets should be increased (id. at 3).

LEAN agrees that an immediate increase in energy efficiency program budgets is necessary. Furthermore, LEAN contends that the revised plans must be approved as soon as possible, otherwise the Program Administrators will be unable to implement the programs for this winter (LEAN Comments at 1-2). TEC notes that the cost to advance known projects will be minimal and will not diminish program cost-effectiveness and, therefore, recommends that Program Administrators advance current heating contracts by paying contractors overtime or a performance incentive to complete projects as soon as possible (TEC Reply Comments at 2).

ENE states that, by its calculations, there is a large spread in proposed budget increases among the Program Administrators (ENE Comments at 4). So that the revised plans are directly comparable, ENE recommends that the Department or DOER require the Program Administrators to submit identical spreadsheets that include proposed spending levels by customer class on a per customer and per unit of energy sold basis (<u>id.</u> at 3-4). ENE also states that, in some revised plans, budgets appear to be reduced and that the Department should not approve any reductions without good reason (id. at 4).

2. Funding Mechanisms

The Attorney General contends that many of the electric proposals contain insufficient detail about the sources of additional funding. The Attorney General states that, in order for the Department to approve funding mechanisms that collect additional money from customers, the Department must consider the effect on residential and commercial customers and the availability of private or public funds (Attorney General Comments at 13, citing St. 2008 c. 169, § 11). In addition, the Attorney General argues that any new reconciling rate mechanism designed to recover incremental energy efficiency program costs must be subject to a hearing before the Department under G.L. c. 164, § 94 to establish just and reasonable rates (id. at 14-15, citing Consumers Organization For Fair Energy Equity, Inc. v. D.P.U., 368 Mass. 599, 606 (1975)). Wal-Mart also asserts that any request to approve a funding mechanism for incremental energy efficiency expenditures requires a thorough investigation that includes discovery and an evidentiary hearing (Wal-Mart Comments at 2-3). CLF

suggests that any new energy efficiency tariffs or reconciling mechanisms should be considered by the Department in a separate proceeding (CLF Comments at 1-2).

DOER states that proposals to recover lost base revenues through various mechanisms is a departure from current practice that must be thoroughly reviewed by the Department (DOER Comments at 3). Finally, LEAN states that significant consumer savings can only occur if energy efficiency measures are fully funded and that funding is allowed to rollover from year to year (LEAN Comments at 2).

3. Scope of Proposed Energy Efficiency Programs

The Attorney General states that the revised plans exceed the scope of the Department's directives. First, the Attorney General states that some revised plans include spending increases for programs that are not designed to reduce heating costs for residential customers (Attorney General Comments at 4-5).⁷ In addition, the Attorney General states that many proposals include new programs and program changes (id. at 11). The Attorney General argues that such program changes and new programs require more investigation than is

For example, the Attorney General states that nearly all gas companies and some electric companies propose to change the income eligibility level from 60 percent to 80 percent of the Commonwealth's median income for low-income energy efficiency programs (Attorney General Comments at 11). The Attorney General argues that the low-income eligibility issue is currently the subject of Investigation into Issues Affecting Low-Income Customers, D.P.U. 08-4, and, therefore, should not be considered by the Department in the instant proceeding (id-att11-12). In contrast, LEAN contends that there is no valid reason to deny proposals that make energy efficiency measures more affordable to households with incomes between 60 and 80 percent of the median income (LEAN Reply Comments at 2). In its Revised Plan, Berkshire proposes to change the income eligibility level for its low-income gas programs (Revised Plan, Exh. 3).

allowed for in this expedited review (<u>id.</u> at 12). Accordingly, the Attorney General recommends that the Department deny any request to implement new programs or changes to existing programs (<u>id.</u>). Alternatively, the Attorney General suggests that Program Administrators could implement new pilot programs and other initiatives without Department approval if shareholders agree to fund the programs (<u>id.</u>).

Unlike the Attorney General, LEAN supports increased budgets for energy efficiency measures that are not directly related to heating (LEAN Reply Comments at 2). LEAN argues that any measure that reduces utility bills will help customers this winter (LEAN Comments at 2).

DOER states that, despite the Department's focus on approving only residential heating programs, it should consider allowing "stop-gap" proposals that address large unmet demand in cost-effective C&I programs (DOER Comments at 3). However, AIM contends that funding for C&I programs should not be increased this winter because the lead time to implement these programs is long (AIM Comments at 3). Rather, AIM suggests that C&I programs should be considered for budget increases in 2009 (id.). Finally, CLF agrees that proposals to increase funding for C&I programs should be deferred to proceedings on the 2009 energy efficiency plans (CLF Comments at 1).

4. Performance Incentives

The Attorney General suggests the Program Administrators forgo shareholder incentives to help customers this winter (Attorney General Comments at 11). DOER states

that increased spending levels may necessitate adjustments to shareholder incentives to avoid inappropriate (DOER Comments at 3).

C. Company-Specific Comments

ENE states that Berkshire is reducing spending in some programs while other programs budgets are increased (ENE Comments at 6-7). ENE recommends that Berkshire reexamine its Revised Plan and identify ways to expand all of its programs and budgets (id. at 7).

The Attorney General argues that Berkshire's proposal inappropriately increases the budget for C&I energy efficiency programs (Attorney General Comments at 6). Specifically, the Attorney General contends that Berkshire proposes to dedicate 88 percent of additional funding toward C&I programs (id. at 13). In addition, the Attorney General contends that the Company does not provide detailed information to support its Revised Plan. For these reasons, the Attorney General recommends that the Department reject Berkshire's Revised Plan, instead, require the Company to submit a new proposal focused on low-income and residential heating (id. at 14).

In response to the Attorney General, Berkshire states that it is not proposing an increase to its C&I budget (Berkshire Reply Comments at 4). Berkshire indicates that its C&I budget is the same as the Company's June 30, 2008 budget filed with the Department (<u>id.</u> at 4).

IV. ANALYSIS AND FINDINGS

A. <u>Introduction</u>

In order for the increased spending to provide benefits to customers during the 2008 winter season, it is necessary for the Company to accelerate implementation of cost-effective

energy efficiency programs as soon as possible. Nevertheless, the Department is obligated to review the programs, applying its criteria from the Energy Efficiency Guidelines, which require that the Company's energy efficiency programs be cost-effective. Energy Efficiency Guidelines §§ 4.2.1(a), 6.2.

An energy efficiency program is deemed cost-effective if its benefits are equal to or greater than its costs, as expressed in present value terms. The Department evaluates program cost-effectiveness using the Total Resource Cost test, which considers the costs and benefits to both the energy system and the participating customers. <u>Id.</u> at § 3. Energy system costs are comprised of two components: (1) Program Administrator costs, including costs to develop, plan, administer, implement, market, monitor, and evaluate programs; and (2) a performance-based shareholder incentive. <u>Id.</u> at § 3.2.2. Program participant costs include all costs incurred by customers as a result of their participation in the programs, net of company rebates and other incentives. <u>Id.</u> at § 3.2.3.

B. Revised Plan

The Company proposes to increase spending on the following programs: (1) residential weatherization program; (2) the heat loan program's incentives and rebates and (3) low-income sector heating system replacements (Revised Plan, Exh. 2, Exh 4). The Company did not update its cost-effectiveness analysis, stating that an increase in spending will not significantly change the benefit/cost ratios (Exh. MJS-1, at 9-10).

In addition to increased program spending, the Company proposes: (1) to increase the low-income eligibility level from 60 percent of the Commonwealth's median income to

80 percent of the Commonwealth's median income; (2) to introduce a residential and commercial high efficiency storage water heating rebate program; (3) to introduce a residential and commercial combined high efficiency space conditioning and water heating units program; and (4) introduce the high efficiency commercial rebate program (Revised Plan-FR, Att. A at Exh. 2, Exh. 3, Exh. 4; Revised Plan-NA, Att. A at Exh. 2, Exh. 3, Exh. 4).

The Department's July 25, 2008 Letter Order was silent regarding whether we would allow program administrators to make changes to program designs for the remainder of 2008. The Department generally encourages the adoption of program design changes that improve the efficiency and cost-effectiveness of the delivery of energy efficiency services to customers. However, in light of the need to increase spending on residential heating programs as soon as feasible, the Department must limit the types of program design changes that we will allow at this time. Accordingly, we will allow only those program design changes that (1) are not a significant departure from current program designs, and (2) will have no effect on the program's cost-effectiveness.

The Company's proposed residential and commercial high efficiency storage water heating rebate program, residential and commercial combined high efficiency space conditioning and water heating units program, and high efficiency commercial rebate program represent significant departures from current program designs. These programs are new measures and in part targeted at commercial end-uses. Accordingly, the Department will not approve implementation of the residential and commercial high efficiency storage water heating

rebate program, residential and commercial combined high efficiency space conditioning and water heating units program, and high efficiency commercial rebate program at this time.

The Company's proposal to change the eligibility criteria for participation in its low-income single family program is also a significant departure from current program design. While such a change may ultimately be found appropriate, it will not be adopted without sufficient review and input from the relevant efficiency stakeholders. Accordingly, the Department will not approve this proposed change at this time.

With regard to the Attorney General's statement that the Company did not provide sufficient information in its Revised Plan, the Company subsequently submitted responses to information requests and additional information in its reply comments to supplement its original filing (see Exh. DPU 1-2; Berkshire Gas Reply Comments). In total, we find that the Company has provided sufficient information to enable the Department to review and assess whether the Company's energy efficiency programs in the Revised Plan are cost-effective.

Further, we find that the Attorney General's concerns regarding Berkshire's proposed spending on C&I programs are unfounded. The Company has sufficiently demonstrated that although Berkshire proposes new C&I measures, such measures are funded under the existing C&I budget, and therefore none of its proposed spending is being allocated to C&I programs (Berkshire Reply Comments at 4, Sch. 1).

With the exception of the high efficiency commercial rebate program, high efficiency storage water heating rebate program or the combined high efficiency space conditioning and water heating units program, and change in its low-income eligibility criteria, the Department

concludes that, based on the information included in its Revised Plan, reply comments, and responses to information requests, the Company (1) satisfied the requirements set forth in our July 25, 2008 Letter Order, and (2) sufficiently demonstrated the cost-effectiveness of the programs for which it proposes to increase spending. Therefore, we direct the Company to revise its 2008 budgets for the residential weatherization program, the heat loan program incentives and rebates, and low-income sector heating system replacements, and to implement the budget using the existing low-income eligibility criteria.

The Department directs the Company to submit a compliance filing, within seven days of the date of this Order, that includes the revised information accounting for changes in cost-effectiveness due to the retention of the existing income eligibility level and budgets reflecting the removal of the programs not accepted by the Department.

The Company has requested that it recover its costs incurred during 2008, including recovery of incentives and lost margins, for all energy efficiency programs through the conservation charge component of the LDAF (Exh. MJS-1, at 12). The Department finds this request to be reasonable and consistent with Department practice. See D.T.E. 04-38, at 10 (2004).

V. ORDER

Accordingly, after due notice, opportunity for comment, and consideration, it is

ORDERED: That, except for the residential and commercial high efficiency storage

water heating rebate program, residential and commercial combined high efficiency space

conditioning and water heating units program, high efficiency commercial rebate program, and

change in its low-income eligibility criteria, the Revised Plan submitted by The Berkshire Gas Company is APPROVED; and it is

<u>FURTHER ORDERED</u>: That The Berkshire Gas Company shall file a compliance filing within seven days of the date of this Order, as discussed in Section IV (B) above; and it is

<u>FURTHER ORDERED</u>: That The Berkshire Gas Company shall comply with all other directives contained in this Order.

/s/
Paul J. Hibbard, Chairman
,
/s/
W. Robert Keating, Commissioner
2,
/s/
Tim Woolf, Commissioner

By Order of the Department,

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within 20 days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of 20 days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971.